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JAMES H. McKENNEY,
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IN THE

SUPREME COURT OF THE UNITED STATES.

MANUEL S. DE CAMBRA,
Plaintiff in Error,
vs.
HANNAH ROGERS AND
FRANK J. ROGERS,
Defendants in Error.

October Term,
A. D. 1902.
No. 170.

In Error to the Supreme Court of the State of California.

BRIEF FOR PLAINTIFF IN ERROR.

J. C. BATES,
Attorney for Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 170.

MANUEL S. DE CAMBRA, Plaintiff in Error,

vs.

HANNAH ROGERS AND FRANK J. ROGERS, Defendants in Error.

BRIEF OF PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

This action was commenced in the Superior Court of the County of Alameda, California, in ejectment, by Hannah Rogers and Frank J. Rogers as plaintiffs (defendants in error) on the 28th of April, A. D. 1897, against Manuel S. De Cambra, the plaintiff in error, and others, as defendants, to recover the possession of 176 $\frac{00}{100}$ acres of land situated in that county.

Manuel S. De Cambra, as one of the defendants in the action, now the plaintiff in error, appeared in the action, and denied the allegations of the complaint, and at the same time filed with his answer and served upon the plaintiffs at law, now the defendants in error, his cross-complaint in equity, duly verified. It begins at the 9th line in folio 7, page 5, and ends at folio 18½, page 14, of the printed record now before this Court.

The cross-complaint in equity alleges that Manuel S. De Cambria bought 450 acres of land, embracing the land in controversy, in 1867, for a large sum of money, from Hewett Steel, it then being a part of the Mexican grant, "Laguna de los palos colorados," duly confirmed by boundaries, but unsurveyed and unpatented. That De Cambria went into the actual possession of the 450 acres in 1867, and so continued down to the present day of that part of it designated as lots 3 and 4, and east half of southwest quarter of Section 31 in Congressional Township Number One, south of range two, west of the Mount Diablo base and meridian line. (Please see diagram of the land in controversy between pages 26 and 27 of the printed record now before this Court.)

That De Cambra sold to his brother-in-law, Enos J. Rogers, the husband of Hannah, and the father of Frank J. Rogers, an undivided one-half interest in the 450 acres, in 1871, with the express agreemcnt between them that if the same should become public lands of the United States, then and in that event Rogers should take as his pre-emption claim under the laws of the United States the northwest quarter of said Section 31, and De Cambra should claim the southwest quarter of said Section 31. (Please see last line in folio 8, page 5, and down to the end of that folio, and all of page 6, of the printed record, as embracing the last above statement.)

That on July 30th, 1878, the plat of the township was filed in the United States Land Office at San Francisco. That after the plat was filed, Rogers and De Cambra went to the land office to file their pre-emption declaratory statements. That De Cnmbra requested Rogers to prepare his declaratory statement to be filed for lots 3 and 4, and east half of the southwest quarter of Section 31, De Cambra not being able to write or read. That said Rogers, instead of doing as directed by De Cambra, intentionally, wilfully, knowingly, corruptly and fraudulently inserted in the said Manuel S. De Cambra's notice and claim of pre-emption, to which he, Manuel S. De Cambra, put his cross, or mark, the northeast quarter of said Section 31, upon which he, Manuel S. De Cambra, had not then and never had a dwelling house or other improvements whatever, and only a small part of which was then in his possession, and three-fourths of which was utterly worthless, and tendered said pre-emption notice and claim in the name of Manuel De Cambra in said land office to be filed as a record therein. That said Rogers then and there at said time, in the United States Land Office, prepared and signed his name intentionally, knowingly, wilfully and fraudulently to his pre-emption notice, wherein he claimed lots 3 and 4 and the east half of the southwest quarter of said Section 31, and then and there tendered the same to the Register and Receiver, to be filed by them as a record in said land office.

That De Cambra did not discover the fraud that Rogers had perpetrated upon him until the 29th day of December, 1883. (Please see folio 8½, page 6, down to the 8th line in folio 10, page 7, of the printed record, for the above statements.)

That De Cambra, on the 29th day of December, 1883,

upon the discovery of the fraud that Rogers had perpetrated upon him, filed his pre-emption notice in the land office for lots 3 and 4 and east half of the southwest quarter of said Section 31, and the same is "Exhibit A," attached to and made a part of the cross-complaint; and that exhibit is shown in folios 17½ and 18, page 13, of the printed record. (Please see for the foregoing statement, folio 10, page 7, of the printed record.)

That Manuel S. De Cambra, the plaintiff in error, on the 14th of April, 1884, and succeeding days, produced competent evidence before the Register and Receiver to prove his right to enter said lots 3 and 4 and east half of southwest quarter of Section 31. Under the laws of the United States, and to obtain a patent therefor, but, that by misconstruction of the evidence and the law applicable thereto, the Register and Receiver denied the claim and right of De Cambra, from which he appealed to the Commissioner of the General Land Office, who, by his wrongful decision and in violation of De Cambra's rights under the provisions of Chapter 4 of Title XXXII of the Revised Statutes of the United States, only awarded to him one undivided one-half part of lot 3 and of east half of southwest quarter of Section 31, and awarded all of lot 4 of said quarter section to one Fontes. (Please see for the above statement all of pages 8 and 9 of the printed record.)

That the plaintiff in error, De Cambra, appealed from the decision of the Commissioner to the Secretary of the Interior from that part of the Commissioner's decision, which failed to award to him all the land he claimed as set forth in his pre-emption notice; but Hannah Rogers, pretending to represent the so-called heirs-at-law of Enos J. Rogers, did not appeal to the Secretary of the Interior until long after the right to take an appeal had expired. (Please see the last six lines of page 8, down to and including the first five lines of folio 14, page 10, of the printed record for the above statement.)

That upon the said wrongful appeal so taken by said Hannah Rogers and Frank J. Rogers to the Secretary of the Interior, a decision was thereafter, on the 9th day of October, 1894, rendered therein, purporting to be the decision of the Secretary of the Interior, in but which the plaintiff in the cross-complaint, upon and according to his information and belief, charges and alleges the truth, and the fact to be (without any intention whatever to offer, or to mean

any sort of disrespect to the Secretary of the Interior, Honorable Hoke Smith), that he never read a word of the evidence submitted to him on said appeal by the plaintiff in the cross-complaint, the plaintiff in error, but that subordinates, clerks employed in said department, constructed, on said 9th day of October, 1894, on said two appeals, the said decision therein, and procured the Secretary, Honorable Hoke Smito, merely to put and sign his name to it, which he did without reading, studying, weighing or considering any of said evidence so taken before the Register and Receiver, and submitted to them by said Manuel S. De Cambra and Hannah Rogers, all of which was transmitted to him for consideration and decision by the Register and Receiver, and by the Commissioner of the General Land Office. That said decision awarded all the tracts of land in controversy to the heirs of Enos J. Rogers. That upon that pretended decision a patent of the United States wrongfully and in violation of the laws of the United States, and the vested rights of the plaintiff in the cross-complaint, and plaintiff in error, were issued under the seal of the General Land Office in the month of June, 1896, and delivered to Hannah Rogers and Frank J. Rogers as the alleged heirs of Enos J. Rogers. De Cambra alleges in the cross-complaint that by reason of the failure of the Secretary of the Interior to personally examine and consider the evidence submitted to him on the appeal by Manuel S. De Cambra, nor to render any personal decision, judgment or decree thereon on said appeal, or otherwise. Manuel S. De Cambra, the plaintiff in error, has been and is deprived of his right, title, interest and property in said lots of land of the value of $2,500.00 without due process of law, and contrary to and in violation of the laws of the United States, and especially and particularly against and contrary to the XIV Amendment to the Constitution of the United States. And the plaintiff in the cross.complaint, who is also the plaintiff in error, specially plead and set up therein the laws of the United States, as guaranteeing to him protection and safety in the prosecution and assertion of his pre-emption claim and right under the laws of the United States. And further specially pleads, asserts and contends that his right and title to said tracts and lots of land has been taken away from him by the wrongful acts of the United States Land Office, and wrongfully and unlawfully given over by the letters patent to Hannah Rogers and Frank J. Rogers, the pretended heirs of Enos J. Rogers, in

violation of and contrary to the spirit, intent and meaning of the XIV Amendment of the Constitution of the United States of America, under which said De Cambra claims the protection of his rights and claims in and to said tracts of land.

That the plaintiff in the cross-complaint offers to pay into Court for Hannah Rogers the sum she paid the land officers for said tracts of land, and all other costs and charges. The prayer of the cross-complaint is: that it be adjudged and decreed that the defendants in the cross-complaint, Hannah Rogers and Frank J. Rogers, as the alleged heirs of Enos J. Rogers, hold the legal title to the premises described, as trustees for the plaintiff, in the cross-complaint; that it be adjudged and decreed that the patent be cancelled and annulled, as having been improvidently issued, and against the laws of the United States, and against the XIV Amendment of the Constitution of the United States of America; and prays for such other and further relief in the premises as may be just, and as to equity belongs. (Please see for the foregoing statement from folio 14, page 10, to and including folio 18, page 13, of the printed record, now before this Court.)

That to the cross-bill filed in the trial Court by Manuel S. De Cambra, which was duly verified, Hannah Rogers and Frank J. Rogers, by their attorney, demurred, "and for grounds of demurrer specifies and assigns: That the said cross-complaint does not state facts sufficient to constitute a defense to the complaint of the plaintiffs herein." (Please see the middle part of page 36 of the printed record as coutaining the demurrer to the cross-bill in equity.)

The trial Court sustained that demurrer. (Please see the last nine lines of page 36 and the first four lines of page 37 of the printed record for the order sustaining the demurrer.)

The plaintiff in the bill, Manuel S. De Cambra, excepted to the order of the trial Court wherein it sustained the demurrer to the cross-bill. (Please see lines two, three and four at the top of page 37 of the printed record for that exception.)

The cross-bill filed by De Cambra begins at the ninth line on page 5 and ends near the middle of page 14 of the printed record now before the Court.

The demurrer to the cross-bill having been sustained and an exception taken to the order sustaining it, the Superior

Court of Alameda County heard the evidence on the law side of the case and rendered judgment in favor of Hannah and Frank J. Rogers, and against Manuel S. De Cambra and Francisca De Cambra, his wife, from which they appealed to the highest court of law of the State of California, the Supreme Court of the State. The record on that appeal was upon the judgment-roll, to which was attached a bill of exceptions taken to the rulings and decisions of the trial Court as provided by Section 950 of the Code of Civil Procedure of the State of California, which declares that "on an appeal from a final judgment the appellant must furnish the Court with a copy of the notice of appeal, of the judgment-roll and of any bill of exceptions in the case upon which the appellant relies." The bill of exceptions attached to the judgment-roll on that appeal begins with the words "Bill of Exceptions" in the fifth line from the top of page 18 and ends at the fifth line from the top of page 22 of the printed record now before this Court.

That upon the appeal from the judgment and order sustaining the demurrer to the complaint in equity by the Superior Court to the Supreme Court of California, Manuel S. De Cambra, plaintiff in error, relied for a reversal of the judgment appealed from upon four exceptions taken to the decisions of the trial Court, namely:

1st. That the Court erred in sustaining the demurrer of Hannah and Frank J. Rogers to the cross-complaint in equity filed and served by Manuel S. De Cambra with his answer to the complaint at law. That exception is found in "minute order" in the second paragraph from the top of page 15 of the printed record before this Court; and the

2nd exception to the ruling of the trial Court admitting in evidence the patent to E. J. Rogers, it appearing from the evidence of Hannah Rogers, one of the plaintiffs in the trial Court, "that said Enos J. Rogers died intestate in the year 1882, and no letters of administration applied for or issued, and left no will," the exception being upon the ground that it was proven that Enos J. Rogers had died more than thirteen years before said patent was issued, and therefore that said paper writing was irrelevant, incompetent and immaterial evidence. (Please see the last half of page 18 of the printed record, from which the last above statement is made.)

3rd. Upon the ground of the insufficiency of the evidence to sustain the decision and final judgment of the trial

Court; and

4th. That the conclusions of law drawn from the evidence by the trial Court were not sustained by the evidence. (Please see the last eight lines of page 20 and all of page 21 of the printed record now before this Court, as embracing the last above statement.)

That upon that appeal the Supreme Court of California, in Department No. 1, consisting of three of the seven Justices, and upon rehearing before the seven Justices, four affirmed the rulings and judgment of the trial Court, Mr. Chief Justice W. H. Beatty dissenting. and two of the Justices remaining silent. That final judgment of the Supreme Court begins with letters, figures and words "S. F. No. 1271. In Bank. April 30th, 1901," near the top of page 43 of the printed record, now before this Court, and ends with "Beatty, C. J." at the end of the first paragraph of page 47 of the same record. It is also reported in Vol. 132, Cal. Reports, pages 502 to 505.

That to reverse that final judgment of the Supreme Court of California, Manuel S. De Cambra prayed by petition that the Chief Justice of the Supreme Court of California allow the writ of error, which had been issued from the Honorable, the Supreme Court of the United States, on the 29th day of May, A. D. 1901, which was granted by the Chief Justice of the Supreme Court of the State of California. (Please see for the allowance of the writ of error the eight last lines on page 1 of the printed record now before this Court and the twelve last lines on page 50 of said record.)

That a supersedeas bond was filed on the allowance of the writ of error, fixed by the Chief Justice of the Supreme Court of California, and approved by him on the 29th day of May, 1901, as appears on pages 51 and the first four lines on page 52 of the printed record now before this Court.

That citation was duly issued to Hannah Rogers and Frank J. Rogers, the defendants in error, and duly served upon them and upon their attorney on the 6th day of June, A. D. 1901, is shown by the printed record, pages 52 and 53, now before this Court.

That the record, from which the printed record, now before this Court, was taken, is duly certified to, is shown by the last fourteen lines on page 53 and top of page 54 of said printed record.

Assignment of Errors. (Please see page 2 and sixteen first lines of page 3 of printed record now before this Court.

I. Assignment of Errors.

The plaintiff in error, Manuel S. De Cambra, assigns for error and urges and contends that the Supreme Court of California erred, to the great detriment of plaintiff in error, in the rendition of its final judgment in deciding that the cross-complaint of the plaintiff in error did not state facts sufficient to constitute a cause of action, nor a defense to the action at law, wherein the defendants in error were the plaintiffs at law in the trial Court, and Manuel S. De Cambra. the plaintiff in error, was the defendant at law and plaintiff in the cross-complaint, and in the rendition of its final judgment, that the demurrer interposed by the defendants in error to the cross-complaint was properly sustained, and therein erred in affirming the order sustaining said demurrer.

II. Assignment of Errors.

That the Supreme Court of California erred in the rendition of its final judgment of said cause, to the great injury and detriment of the plaintiff in error, and to the destruction of his rights to the tracts of land in controversy which he claimed altogether under the laws of the United States and the XIV Amendment to the Constitution of the United States, by founding its said final judgment upon the statute laws of California, and exclusively upon the decision of its own Court, instead of the laws of the United States, the title to said lands in controversy having emanated from the United States.

III. Assignment of Errors.

That in the record and proceedings as aforesaid. there is manifest error, to the great prejudice of plaintiff in error, to wit: That the declaration aforesaid of the defendants in error and the matters therein contained are not sufficient in law for the said Hannah Rogers and the said Frank J. Rogers, defendants in error, to have or maintain their action aforesaid against the said Manuel S. De Cambra, the plaintiff in error, because all the matters and things in the cross-complaint in equity, file, and served with his answer, by Manuel S. De Cambra, plaintiff in error, were, by the demurrer of the defendants in error, admitted to be true.

IV. Assignment of Errors.

That by the record aforesaid it appears that the final judg-

ment aforesaid, given and made in said cause, was for said Hannah Rogers and Frank J. Rogers, the defendants in error, and against the said Manuel S. De Cambra, the plaintiff in error, where, as by the laws of the United States, and particularly by the provisions of Chapter IV of Title XXXII of the Revised Statutes of the United States, under which the plaintiff in error claims, and by the rules and principles of equity the said final judgment ought to have been given for the said Manuel S. De Cambra, against Hannah Rogers and Frank J. Rogers, because the said cross-complaint in equity filed and served by the plaintiff in error was sufficient law and equity to entitle the said Manuel S. De Cambra to final judgment in his favor.

V. Assignment of Errors.

Because it further appears from the record in this cause now in this Court that the Supreme Court of California erred in the rendition of its final judgment in not holding and deciding that the cross-complaint in equity filed by the plaintiff in error was sufficient in law and equity to entitle the plaintiff in error to the relief therein prayed. And the said Manuel S. De Cambra, the plaintiff in error, prays that the final judgment of the Supreme Court of California aforesaid be reversed, annulled and for naught held, and that he may be restored to all thinge which he has lost by reason of the said erroneous final judgment aforesaid.

Argument.

The plaintiff in error, by his cross-complaint in equity, set up that he claims right and title to the land in controversy under the provisions of Chapter IV of Title XXXII, which includes Section 2259 of the Revised Statutes of the United States and under the XIV Amendment to the Constitution of the United States. (Please see the six first lines of page 10, the middle of folio 16½, page 12, and all of "Exhibit A" in page 13 of the printed record, now before this Court, for the assertion by the plaintiff in error of his right and title to the land in controversy, under the laws of the United States and under the XIV Amendment to the Constitution of fhe Uuited Sfates, against which right and title so set up and claimed by the plrintiff in error the final judgment of the Supreme Court of the State of California was erroneously rendered.)

The Statute Laws of California, Section 342, of the Code

of Civil Procedure, declares: "Whenever the defendant seeks affirmative relief against any party, relating to or depending upon the contract or transaction upon which the action is brought, *or affecting the property to which the action relates, he may, in addition to his answer, file at the same time, or by leave of the Court subsequently, a cross-complaint. The cross-complaint must be served upon the parties affected thereby, and such parties may demur or answer thereto as to the original complaint.*"

In Taylor vs. McLane, 64 Cal., 513–514, the Supreme Court of California said, at page 514: * * *

"To the complaint of the plaintiff at law in ejectment, the defendant set up a cross-complaint in equity. The Code of Civil Procedure, Section 442, authorizes defendant to file a cross-complaint whenever he seeks affirmative relief affecting the property to which the action relates."

The same principle was announced by the same Court in Colton L. & W. Co. vs. Reynolds, 57 Cal., 592–593, and in Winter vs. McMillan, 87 Cal., 264–225–266.

The Supreme Court of California erred in the rendition of its final judgment wherein it decided that the demurrer of the defendants to the cross-complaint of the plaintiff in error was properly sustained, and therein overruled the decision of the Supreme Court of California rendered in the case of Bird vs. Wilcox et al., 45 Cal., 686–889. The Supreme Court in that case decided it according to the laws of the United States and the decisions of the Supreme Court of the United States. Its decision, on page 689, is as follows:

"By the Court—We are of opinion that the complaint is sufficient against the general demurrer interposed by the defendants. (Johnson vs. Towsley, 13 Wallace, 72.) Judgment reversed and cause remanded, with directions to overrule the demurrer."

That case involved a United States patent for land issued to the defendants upon a contest in the Land Department, wherein the patent was given to Wilcox, whose assignee was Vale, Bird being defeated in the Land Department, who claimed in his bill of complaint against Wilcox and his grantee, Vale, that he had been wrongfully deprived of his rights to the land by the erroneous decision of the Secretary of the Interior. But instead of following the decisions of the Supreme Court of the United States as in the above case of Bird vs. Wilcox et al., four of the Justices out of

the seven Justices of the Supreme Court of California (Mr. Chief Justice W. H. Beatty dissented) in the case of Manuel S. De Cambra, plaintiff in error, vs. Hannah Rogers and Frank J. Rogers, defendants in error, erroneously decided the cause, founding the decision upon the Statutory Laws of California, wherein, in said judgment, it declares: "The law presumes they (the land officers) discharged their duty (Code of Civil Procedure, Section 1963, Subdivisions 15–16)" * * * "under well established rules of law the judgment rendered in the former proceeding (in the Land Department) is conclusive of the rights of the parties here, Code of Civil Procedure, Section 1903." (Please see for the two last above quotations, folio 60, page 46, of the printed record now before this Court.)

In Wilcox vs. Jackson, 13 Peters, 498–517, this Court said, at page 517: "We hold the true principle to be this, that whenever the question in any Court, State or Federal, is, whether a title to land which had once been the property of the United States has passed, that question must be solved by the laws of the United States."

The demurrer of the defendants in the cross-complaint, who are also the defendants in error, to the plaintiff's cross-complaint in equity, who is also the plaintiff in error, admits all the allegations of the cross-complaint to be true, and the order sustaining it was in effect a dismissal of the cross-complaint, and was so declared by this Court in Lytle vs. State of Arkansas, 9 How, 314. The Court said, at page 331: "The Circuit Court sustained the demurrer, and in effect dismissed the bill. The cause was taken to the Supreme Court, which affirmed the decree of the Circuit Court. The demurrers admit the truth of the allegations of the bill and consequently rests on the validity of the right asserted by the complaint," and at page 333 said: "It is a well established principle that where an individual in the prosecution of a right does everytning in his power which the law requires him to do, and he fails to attain his right by the misconduct or neglect of a public officer, the law will protect him. The claim of pre-emption is not that shadowy right which by some it is considered to be. Until sanctioned by law, it has no existence as a substantive right; but when covered by the law it becomes a legal right, subject to be defeated only by a failure to perform the conditions annexed to it."

"Exhibit A," attached to and made a part of the cross-complaint of the plaintiff in error.

"Declaration and statement of pre-emption for land not subject to private entry.

"Manuel S. De Cambra, of the County of Alameda and State of California, being the head of a family and a citizen of the United States, did, on or about the 27th day of October, 1867, settle upon and improve, and has ever since claimed, occupied and improved the lots 3 and 4 and east half of southwest quarter of Section 31 in township one south, range two west, Mount Diablo Meridian, in the district of lands subject to sale at the United States Land Office at San Francisco, California, and containing one hundred and seventy-six and sixty one-hundredths ($176\frac{60}{100}$) acres, which land has not yet been offered at public sale, and thus rendered subject to private entry; and I do hereby declare my intention fo to claim said tracts of land as a pre-emption right under the provisions of the Act of Congress approved September 4th, 1841, March 3rd, 1853, and Section 2259 of the Revised Statutes of the United States.

Given under my hand this 29th day of December, A. D. 1883.

his
MANUEL S. ⋈ DE CAMBRA.
mark

Witness: B. B. Newman,
George W. Lee.

Signed in the presence of
B. B. Newman, George W. Lee.

(Endorsed.) No. 17,915. Declaratory Statement of Manuel S. De Cambra. Filed December 29th, 1883." (Please see page 13 of printed record now before this Court for said Declaratory Statement.)

Hannah Rogers, for the heirs of Enos J. Rogers, filed her declaratory statement for the same tracts of land on "January 21, 1884," which was twenty-two days after the plaintiff in error had appropriated the land by filing his declaratory statement for it. In Hannah Rogers' declaratory statement she alleges that "Enos J. Rogers" settled on the tract in controversy in "July, A. D. 1871.', But the land was claimed as a part of the Mexican grant "Laguna de los colorados" until August 8th, 1878, when, by the Secretary of

the Interior's decision, it was excluded from that grant, and for the first time became public land of the United States. In her declaratory statement Hannah Rogers declares "her intention to claim said tracts of land as a pre-emption right under the provisions of said Act of September 4th, 1841." (Please see for Hannah Rogers' declaratory statement, folio 18½, page 14, of the printed record now before this Court.)

The plaintiff in error respectfully contends that the defendants in error have no connection in law nor in equity with the land in controversy, because they attempt to found a claim to it upon "the Act of September 4th, 1841." What Act? On the 21st of January, 1884, when Hannah Rogers files her pre-emption for the heirs of Enos J. Rogers, the only law granting pre-emption rights was embraced in Chapter IV of Title XXXII of the Revised Statutes of the United States.

"Title XXXII, Chapter IV, of the Revised Statutes of the United States" declares:

"Section 2257. All lands belonging to the United States to which the Indian title has been or may hereafter be extinguished, shall be subject to the right of pre-emption under the conditions, restrictions and stipulations provided by law.

"Section 2259. Every person being the head of a family, or a widow, or single person over the age of twenty-one years of age, and a citizen of the United States, or having filed a declaration of intention to become such, as required by the naturalization laws, who has made or hereafter makes a settlement in person on the public lands subject to pre-emption, and who inhabits and improves the same, and who has erected or shall erect a dwelling house thereon, is authorized to enter with the Register of the Land Office for the district in which such land lies, by legal subdivisions, any number of acres not exceeding one hundred and sixty, or a quarter section of land, to include the residence of such claimant, upon paying to the United States the minimum price of such land."

Section 2260 declares who are disqualified from acquiring a right of pre-emption, to which class the plaintiff in error does not belong, as shown by his cross-complaint, as set forth on page 8 of the printed record now before this Court.

Section 2280 declares:

"Any settler on lands heretofore reserved on account of claims under French, Spanish or other grants, which have

been * * * released from other reservations, shall have the right to pre-emption in the same manner as if no reservation had existed."

The cross-complaint shows that the plaintiff in error settled upon the land in suit in 1867, but that at that time it was claimed as a part of the Mexican grant "Laguna de los palos colorados," and so continued to be up to August 8th, 1878, when upon survey it was ascertained that the land in controversy was in excess of the grant, and by order of the Secretary of the Interior excluded from that grant, at which date it became for the first time public lands of the United States and subject to dispossession under its laws; the plaintiff in error having been in the actual possession of the land in controversy since 1867, his pre-emption right attached to the land as of that date; Enos J. Rogers having no pretense of claim or settlement until 1871, as shown by the cross-complaint near the top of page 14 of the printed record now before this Court.

The plaintiff in error, by his attorney, respectfully contends that the claim set up by Hannah Rogers for the defendants in error "under the provisions of the Act of 4th of September, 1841," (please see the 14th and 15th lines from the top of page 14 of the printed record now before this Court for the claim so set up under "the provisions of the Act of 4th September, 1841,") is not founded upon any law of the United States, because the Revised Statutes, Title XXXII, Chapter IV, embraced all the laws governing pre-emption rights, from June 22, 1874, down to the repeal of Chapter IV in that Title by the Act of March 3rd, 1891, (United States Statutes at large, Vol. 26, pages 1095 to 1103, entitled "An Act to repeal timber culture laws, and for other purposes.")

Title LXXIV of the Revised Statutes of the United States, Section 5595, declares:

"The foregoing seventy-three titles embrace the Statutes of the United States, general and permanent in their nature, in force on the first day of December, one thousand eight hundred and seventy-three, as revised and consolidated by commissioners appointed under an Act of Congress, and the same shall be designated and cited as the Revised Statutes of the United States."

Section 5596 declares:

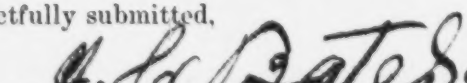
"All Acts of Congress passed prior to the said first day of December, one thousand eight hundred and seventy-three,

any portion of which is embraced in any section of said revision, are hereby repealed." * * *

Title XXXII, Chapter IV, does embrace all of the Act of September 4th, 1841, granting pre-emption rights, hence repealed, and therefore did not exist as a law of the United States on the "21st of January, 1884," when Hannah Rogers filed the declaratory statement shown in folio 46½, page 36, of the record now before this Court.

The plaintiff in error respectfully refers to, and submits the decisions of the Court in the cases of Ord vs. Brandon, 156 U. S., 537; Morrison vs. Stalnaker, 104 U. S., 213; Lytle vs. State of Arkansas, 9 How, 314; Duluth & Iron R. R. vs. Roy, 173 U. S., 587, as sustaining the contention of the plaintiff in error, that under the laws of the United States and the Fourteenth Amendment to the Constitution of the United States, under which he claims his right and title to the land in controversy, he prays for a reversal of the final judgment of the Supreme Court of California, because the printed record before this Court shows that Manuel S. De Cambra failed in nothing in complying with the laws of the United States since he bought the title of Steel in 1867 and his entry under that purchase in that year, and his continued residence thereon down to the date of this brief, with his family; and that the [redacted] fraud perpetrated upon him by Enos J. Rogers should not be rewarded by giving the land to his wife and son, to the destruction of the just claims of Manuel S. De Cambra, the plaintiff in error.

Respectfully submitted,



Attorney for Manuel S. De Cambra, the Plaintiff in Error.

Dated San Francisco, California, this 9th day of December, A. D. 1902.